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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1994

Merlita Pascua Summerfiled,
Petitioner,

V.

Immigration and Naturalization Service,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITIONER'S REPLY MEMORANDUM

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MERLITA PASCUA SUMMERFIELD, PETITIONER,
V.
IMMIGRATION AND NATURALIZATION SERVICE

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PETITIONER'S REPLY MEMORANDUM

The United States Solicitor General's office, in its opposing brief in No. 94 - 1208, has - and for apparently racist reasons - consistently maintained that the Petitioner was not born "in the United States" within the ***geographic scope*** of the Citizenship Clause of the Fourteenth Amendment during the ***territorial period*** (December 10, 1898- July 4, 1946).

The following are the grounds relied upon by the United States Solicitor General's office in opposing Petitioner's claim that she was "born in the United States" within the meaning of the Fourteenth Amendment, and Petitioner's corresponding rebuttal arguments :

1. First ground: Congress' power to determine the political status of the Philipine Islands:

The Treaty of Paris [30 Stat. 1754], which was ratified by the U.S. Congress on February 6, 1899, declared that "[t]he **civil rights** and **political status** of the native inhabitants of the territories hereby ceded to the United States shall be **determined by Congress**. "

Consequently, Congress passed a resolution to the effect that the Filipinos were **not to be considered citizens** of the United States, and declaring that the latter did not **intend** to annex the Philippine islands as an integral part of the territory of the United States.

Reply: The Difference between "Political Status" and "Citizenship Status":

Congresss could not override, much less limit the requirements under the Fourteenth Amendment. In substance, it says that persons born in the United States, and subject to its jurisdiction, are citizens of the United States and of the **State (or territory, e.g., District of Columbia)** where they reside.

This constitutional area is **non-negotiable**. Here, the term "born in the United States" simply means ***"born within the United States territory" - like the District of Columbia***, Puerto Rico, Guam, and the Philippines. No more or less. It is **not** limited to those born in a **State.**

Besides the term "**political status**" does **not** refer to "**citizenship status**". It simply refers to the collective political status of the inhabitants as a whole such as (1) " **their status under a U.S. military administration** (2) **status as a Commonwealth of the United States**", or (3) " **status as an independent country**".

These three political statuses for the Philippines underwent serious U.S. congressional deliberations and have been determined by said Congress.

But, to repeat, the power to determine the **"political status"** of the Filipinos did not, and does not, refer to the **"citizenship status"** of the Filipinos. If at all, the Filipinos were determined to possess "not-aliens-in-the-United-States" status or "United States nationals" status - but never "aliens" during the territorial period.

With respect to the Congressional resolution not to annex the Philippines as an integral part of the U.S. territory, this intention has no effect on the citizenship of those born in the Philippines as a U.S. territory.

Also, Congress resolution not to consider Filipinos born in a U.S. territory (such as the Philippines) as U.S. citizens is unconstitutional. The right to citizenship accruing to persons born in any place subject to the supreme jurisdiction and sovereignty of the United States cannot be diminished, modified or limited by Congress. It is absolute in view of the 13th Amendment's mandate prohibiting the status of slavery in any place subject to the U.S. jurisdiction or prohibiting the classification of any person born therein less than a U.S. citizen.

2. Second ground: Filipinos were citizens of the Philippine Islands (a U.S. Territory):

The Philippine Government Act, ch. 1369, 32 Stat. 691, provided in pertinent part, that " inhabitants of the Philippine Islands" and their "children born subsequent " to April 11, 1899, were deemed "**citizens of the Philippine Islands** and as such entitled to the protection of the United States," Sec. 4, 32 Stat. 692.

Reply: A mere territory cannot have citizens.

The term **"citizens of the Philippine Islands"** is very **misleading.** Citizenship and sovereignty are two faces of one political coin. Citizenship is inextricably tied to a sovereign power. Citizenship cannot exist without a sovereign power. One cannot be a citizen of a mere territory. A territory cannot confer the privileges or the rights flowing directly from citizenship. Only a sovereign power can do so.

Since the Philippines was - like the **District of Columbia** - then a territory of the United States, under the supreme sovereignty of the United States, all Filipinos who were born during the territorial period fell squarely within the **geographic scope** of the term "born in the United States" and were therefore born United States citizens.

In fact, and knowing that Filipinos could not be citizens of a mere territory, they were determined by the U.S. government to be "American nationals" - and not aliens. However, after the Philippines was given independence they were to be treated **"as if they were aliens"**. They were to be treated **"as if they were aliens"** - because they were never born aliens.

Hence, the term "citizens of the Philippine Islands" really means "citizens of the United States". By the same token, the term "citizens of the District of Columbia" also means "citizens of the United States".

(Note: The phrase "citizens of the **State** in which they reside" [contained in the Fourteenth Amendment], does not limit the territorial scope of citizenship to those born in the **States** of the United States. It also refers to those born in a "territory" of the United States, like the District of Columbia.)

3. Third ground : The Revenue Clause limits the territorial scope of the Citizenship Clause.

The Revenue Clause states that " **all Duties, Imposts, and Excises shall be uniformed throughout the United States**". This Court has ruled that the Revenue Clause does not apply to Puerto Rico. The Solicitor General further argues that the same ruling should be applied to the Philippines. Finally, the Solicitor General argues that, like the "Revenue Clause," the "Citizenship Clause" does not also apply to the Philippines.

Reply: The Citizenship Clause applies to the Philippines because of the Thirteenth Amendment prohibiting the classification of any person born in any place subject to the jurisdiction of the United States less than U.S. citizens. Any classification less than citizenship is a form of slavery.

The Petitioner submits that the "Revenue Clause" and the "Citizenship Clause" deals with entirely different subjects. The first deals with **MONEY which is not subject to the provisions of the 13th Amendment**, while the second deals with **inalienable human BIRTHRIGHT or CITIZENSHIP which is subject to the protection of the 13th Amendment.**

While the territorial scope of America's power to raise money may be limited by Congress, the constitutional limits relating to citizenship or birthright cannot. Citizenship or birthright is as precious as the human soul. Citizenship is **more important than the name** of a person. Citizenship is **more important than the religion** of a person. A person's name and religion are - unlike his nationality or citizenship - acquired after birth. Whereas one is born with his nationality or citizenship.

If no Congress, no President, no Court can change the name or religion or a person, then - ***a fortiori*** - no power on earth change or limit the American nationality of any person.

4. Fourth ground: One must be born in State to be considered a citizen.

Only those born in the **State** of the United States are citizens.

Reply: This is wrong. The District of Columbia is not a State. Yet, persons born therein, and subject to the jurisdiction of the United States, are American citizens.

5. Fourth ground: On Slavery.

The Thirteenth Amendment to the Constitution, prohibiting slavery and involuntary servitude "within the United States, or **in any place subject to their jurisdiction**," is also significant as showing that there may be places within the jurisdiction of the United States that are no part of the Union.

Reply: Correct. And this reinforces our position that persons born **in any place subject to its jurisdiction**, are either citizens or aliens. No one is in between an alien or a citizen. Any attempt to classify a person in **any place subject to its jurisdiction less than a full-fledged citizen is a form of slavery.**

If no form of slavery is to exist in any place subject to the jurisdiction of the United States, then persons born therein are equally considered U.S. citizens or nationals. Since Filipinos were born in a place subject to the jurisdiction of the United States, they should be treated as citizens under the Thirteenth Amendment and under the Citizenship Clause of the Fourteenth Amendment.

Whereas, the Revenue Clause is not related to the Thirteenth Amendment, the Citizenship Clause is tempered by the spirit of the Thirteenth Amendment, which guarantees generic equality among men and women born in any place subject to the jurisdiction of the United States. Hence, Congressional limitations on the geographic scope of the Citizenship Clause is constitutionally impermissible.

5. Fifth ground: Congress' power to "make all needful Rules and Regulations respecting the Territory ... belonging to the United States," U.S. Const. Art. IV, Sec. 3, Cl. 2, and "(t)o establish a uniform Rule of Naturalization." U.S. Const. Art. 1, Sec. 8, Cl.4.

Reply: Both provisions are not applicable.

(a) As to **"needful rule".** Section 14 of the Philippine Independence Act of 1934 was a "Not-needful Rule". It was an unconstitutional rule which violates the mandate of the Thirteenth Amendment not to have slaves [not to have less than citizens] in any place subject to its jurisdiction. It has no effect on the geographic scope of the Citizenship Clause of the Fourteenth Amendment.

(b) As to **"uniform Rule of Naturalization".** This is also not applicable. **The Filipinos were not aliens**. They were "American nationals" who were treated **"as if they were aliens" [Ch. 84, Sec. 8(a)(1), 48 Stat. 462]** for some racial reasons. Rules on Naturalization applies only to alien - not the Filipinos born during the territorial period because they were not aliens.

If at all, the **Citizenship Clause** should be **"uniformly applied " to all territories.** Those born in District of Columbia and the Philippines should be treated as citizens of the United States.

6. Sixth ground: Deportation is not a punishment. And so is denaturalization. Hence, Section 14 of the Philippine Independence Act is not a Bill of Attainder.

Reply: The difference between "deportation or denaturalization" and " denationalization". What we are dealing here is not "deportation" nor "denaturalization".

What we have is "denationalization": the unconstitutional divestment of one's birthright without due process of law. We are dealing here with persons who were not aliens in the United States but who, after July 4, 1946, were treated "as if they were aliens" because of their race.

Section 14 of the Philippine Independence Act was tantamount to a cruel and unusual punishment prohibited by the Eight Amendment of the United States Constitution.

While the **deportation or denaturalization** of an alien may not be considered a punishment, the **denationalization** of an American national or citizen is different. It is worse than a Bill of Attainder.

The divestment of American citizenship does not constitute an ordinary form of punishment.

It is a form of cruel and unusual punishment under the Eight Amendment. See ***Trop v. Dulles,*** 356 U.S. 86, 96 (1958).

But, at the same time, it is a Bill of Attainder, because it collectively divested a whole nation of American nationals or citizens of their American citizenship or American nationality or American birthright without a hearing or without due process of law.

CONCLUSION

The territorial limitation of the Revenue Clause is not the same as the geographic scope of the Citizenship Clause of the Fourteenth Amendment, the latter being linked to the Thirteenth Amendment's guarantee of equality to all men and women born in any place subject to the United States' sovereignty and jurisdiction. Any limitation on the territorial boundaries of the Revenue Clause does not nullify the very proposition upon which this government under God was founded: That all men are created equal - generically, and regardless of color and creed. Whereas any attempt to create different classes of nationality for persons born under the jurisdiction of the United States is an insult to the memory of the tens of thousands of Americans who fought and faded in the dark nights of our Civil War in the hope that the concept of inequality among men and women shall forever vanish from the face of the earth.

This Court's decision in ***Wong Kim Ark*** [169 U.S. 649 (1898)] which states that the Citizenship Clause of the Fourteenth Amendment applies to all persons born in any territory of the United States, subject to its jurisdiction - and which is consistent with the provisions of the Thirteenth Amendment which prohibits the classification of persons born in any place subject to U.S. jurisdiction as less than citizens - should be upheld, and the writ of certiorari should be granted.

March 14, 1995

Respectfully submitted,

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